

IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF ILLINOIS

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	Case No. 08-3282
)	
IRVING COHEN, THE WINDSOR)	
ORGANIZATION, INC., and 3-B STORES,)	
INC.,)	
)	
Defendants.)	

ORDER OF JUDICIAL SALE

A Judgment having been entered on March 11, 2013¹ against Defendants Irving Cohen and The Windsor Organization, Inc. (“Windsor”), and in favor of the United States, pursuant to 28 U.S.C. §§ 2001 and 2002 and 26 U.S.C. §§ 7402 & 7403, the Court hereby orders as follows:

1. The property upon which the United States’ liens have been foreclosed a parcel of real property (hereinafter, the “Springfield Property”) located at 709 (a/k/a 719) West Jefferson, Springfield, Sangamon County, Illinois, that is described more fully below:

PARCEL I:

Lots 11-18 in block 1 in Henry Davis, Jr. Addition to the City of Springfield.

PARCEL II:

The West half of that part of the Southwest Quarter of Section 28, Township 16 North, Range 5 West of the Third Principal Meridian described as follows: beginning at the Northwest corner of Lot 1 of Henry Davis, Jr. Addition; thence South along the West line of Lots 1, 2, 3, 4, 5, 6, 7, 8, 9 and 10 of said Henry Davis, Jr. Addition to the Southwest corner of said Lot 10; thence Northwesterly on a projected line to the Southeast corner of Lot 11 of said Henry Davis, Jr. Addition; thence North along the East line of Lots 11, 12, 13, 14, 15, 16, 17 and 18 of Henry Davis, Jr. Addition; thence East on a projected line to the Northwest corner of said Lot 1, the point of beginning.

¹ Dkt. No. 239.

PARCEL III:

Part of Lot 8, assessor's subdivision of the Southwest Quarter of Section 28, Township 16 North, Range 5 West of the Third Principal Meridian more particularly described as follows: commencing at the Southeast corner of Lot 8, thence Westerly along the South line of said Lot 8 a distance of 15.00 feet to the point of beginning; thence Westerly along the South line of said Lot 8 a distance of 186.26 feet to a point being the Northeast corner of Lot 18 in Henry Davis, Jr. Addition to the City of Springfield, thence Northerly a distance of 36.96 feet to an iron pin, thence Southeasterly a distance of 137.79 feet to an iron pin located 60 feet Westerly and 10 feet North of the Southeast corner of Lot 8, thence Southeasterly a distance of 46.16 feet to the point of beginning.

PARCEL IV:

Beginning at a point 146 feet Westerly from the West headwall of the Illinois Central Railroad Company's bridge over Walnut Street and 50 feet Southerly from the centerline of the Illinois Central Railroad Company's switching lead, measured at right angles thereto: thence South 35 feet to the Northeast corner of Lot 18 in Henry Davis, Jr.'s Addition to Springfield; thence West along the North line of said Lot, 181 feet; thence North at right angles thereto 70 feet to a point 50 feet Southerly from the aforesaid track; measured at right angles thereto: thence Easterly and parallel with said track 190 feet to the point of beginning situated in the East half Southwest Quarter of Section 28, Township 16 North, Range 5 West of the Third Principal Meridian.

PARCEL V:

The East 80 feet of Lot 10 in Block 1 of Henry Davis, Jr. Addition to the City of Springfield.

Subject to conveyances to the State of Illinois filed for record in the office of the Recorder of Deeds of said county in Book 647, Pages 71, 73 and 75 of the Southeast Corner of said Lot lying Southeast of a line beginning at a point in the East line of said Lot, 14 feet North of the Southeast corner thereof and extending Southwesterly to a point on the South line of said Lot, 14 feet from said Southeast corner, together with a release of access rights from the premises to State Bond Issue Route 124 (North Walnut Street).

PARCEL VI:

From the Southeast corner of Lot 8 of Assessor's Subdivision of the Southwest Quarter, Section 28, Township 16 North, Range 5 West of the Third Principal Meridian; thence Westerly along the South line of said Lot 8 a distance of 201.26 feet to a point being the Northeast corner of Lot 18 in Henry Davis, Jr. Addition to the City of Springfield; thence Northerly a distance of 36.96 feet to an iron pin at the point of beginning of the tract to be described. From the point of beginning; thence Northwesterly a distance of 175.68 feet to an iron pin; said iron pin being 70.00 feet Northerly of the Northwest corner of Lot 18, Block 1 of the Henry Davis, Jr. Addition to the City of Springfield; thence Southerly a

distance of 2.76 feet; thence Southeasterly a distance of 175.20 feet to a point; thence North a distance of 1.96 feet to the point of beginning.

PARCEL VII:

Lots 1, 2, 3, 4, 5, 6, 7, 8, 9 and 10, except the East 80 feet of Lot 10 in Block 1 of Henry Davis, Jr. Addition.

Except the coal and other minerals underlying the surface of said land and all rights and easements in favor of the estate of said coal and minerals from all above parcels.

Foreclosure of United States' Liens

2. The United States has valid tax liens upon the Springfield Property based upon Irving Cohen's unpaid federal tax penalty liabilities for tax years 1982 and 1983 with an outstanding balance as of June 28, 2011, of \$3,185,325.47, plus additional interest and other accruals thereafter as provided by law. On March 8, 2013, the Court ruled in favor of the United States after a trial on the merits of the government's Complaint, which sought to foreclose the federal tax liens against the Springfield Property.²

3. All other named defendants have had their potential interests adjudicated. The Court has determined that Windsor holds the Springfield Property as Irving Cohen's nominee and that Windsor is Cohen's *alter ego*. In addition, the United States has entered into a stipulation with Defendant 3-B Stores, Inc. ("3-B Stores"), which was adopted by the Court, which gives 3-B Stores specified priority to a portion of the proceeds of the sale of the Springfield Property.³

Sale of the Springfield Property

4. The United States' federal tax liens against the Springfield Property having been foreclosed, the United States Marshal for the Central District of Illinois, his/her representative, or

² Dkt. No. 238.

³ Dkt. Nos. 187-2, 238, p. 100.

an Internal Revenue Service Property Appraisal and Liquidation Specialist (“PALS”) representative is authorized and directed under 28 U.S.C. §§ 2001 and 2002 to offer for public sale and to sell the Springfield Property, free and clear of the right, title and interest of all parties to this action and any successors in interest or transferees of those parties. The United States may choose either the United States Marshal or a PALS representative to carry out the sale under this Order of Judicial Sale and shall make the arrangements for any sale as set forth in this Order. This Order of Judicial Sale shall act as a special writ of execution and no further orders or process from the Court shall be required.

5. The United States Marshal for the Central District of Illinois, his/her representative, or a PALS representative is authorized to have free access to the Springfield Property and to take all actions necessary to maintain, preserve, or improve the property until a deed thereto is delivered to the ultimate purchaser(s). These powers include, without limitation, the power to retain a property manager to oversee the property, and the power to negotiate and execute new commercial leases for the entirety or portions of the Springfield Property.

6. The terms and conditions of the sale are as follows:

a. Except as otherwise stated herein, the sale of the Springfield Property shall be by public auction to the highest bidder, free and clear of all liens and interests, except for any lawful leasehold interest a tenant may have in the property.

b. The sale shall be subject to all laws, ordinances, and governmental regulations (including building and zoning ordinances), affecting the premises, and easements and restrictions of record, if any.

c. The sale shall be held at the courthouse of the county or city in which the Springfield Property is located, on the premises of the property, or at any other place in accordance with the provisions of 28 U.S.C. §§ 2001 and 2002, at a date and time announced by the United States Marshal, his/her representative, or a PALS representative.

d. Notice of the sale shall be published once a week for at least four consecutive weeks before the date fixed for the sale in at least one newspaper regularly issued and of general circulation in Sangamon County, and, at the discretion of the Marshal, his/her representative, or a PALS representative, by any other notice that it or its representative may deem appropriate.

State law notice requirements for foreclosures or execution sales do not apply to this sale under federal law. The notice of sale shall describe the Springfield Property and contain the material terms and conditions of sale in this Order of Judicial Sale.

e. The minimum bid will be set by the Internal Revenue Service. If the minimum bid is not met or exceeded, the Marshal, his or her representative, or a PALS representative may, without further permission of this Court, and under the terms and conditions in this Order of Judicial Sale, hold a new public sale, if necessary, and reduce the minimum bid or sell to the highest bidder;

f. Bidders shall be required to DEPOSIT at the time of sale with the Marshal, his/her representative, or a PALS representative, a minimum of five percent of the bid with the deposit to be made by a certified or cashier's check payable to the United States District Court for the Central District of Illinois. Before being permitted to bid at the sale, bidders shall display to the Marshal, his/her representative, or a PALS representative satisfactory proof of compliance with this requirement.

g. The balance of the purchase price of the Springfield Property in excess of the deposit tendered shall be paid to the Marshal or a PALS representative (whichever person is conducting the sale) within thirty (30) days after the date the bid is accepted by a certified or cashier's check payable to the United States District Court for the Central District of Illinois. If the successful bidder fails to fulfill this requirement, the deposit shall be forfeited and shall be applied to cover the expenses of the sale, including commissions due under 28 U.S.C. § 1921(c), with any amount remaining to be applied to partially satisfy the federal tax liens at issue herein. In the event of the successful bidder failing to fulfill this requirement, the United States may elect to offer the Springfield Property for sale to the next highest bidder or may elect to offer the Springfield Property again for sale at auction under the terms and conditions of this Order of Judicial Sale. The United States may bid as a credit against its judgment without tender of cash.

h. The sale of the Springfield Property shall not be final until confirmed by this Court. The Marshal or a PALS representative shall file a report of sale with the Court, together with a proposed order of confirmation of sale, within 45 days from the date of receipt of the balance of the purchase price.

i. Upon confirmation of the sale, the Marshal or PALS representative shall promptly execute and deliver a deed of judicial sale conveying the Springfield Property to the purchaser.

j. Upon confirmation of the sale, the interests of, liens against, or claims to the Springfield Property held or asserted by the United States in the Complaint and any other parties to this action or any successors in interest or transferees of those parties shall be discharged and extinguished. The sale is ordered pursuant to 28 U.S.C. § 2001. **Redemption rights under state law shall not apply to this sale under federal law.**

k. Upon confirmation of the sale, the purchaser shall have the recorder of deeds in Sangamon County, Illinois, record the transfer of the Springfield Property upon that county's register of title.

7. Until the Springfield Property is sold, the Defendant Irving Cohen, including his nominees and *alter egos*, shall take all reasonable steps necessary to preserve the Springfield Property (including all buildings, improvements, fixtures and appurtenances thereon). Defendant Irving Cohen shall not commit waste against the Springfield Property, nor shall he cause or permit anyone else to do so. Defendant Irving Cohen shall not do anything that tends to reduce the value or marketability of the Springfield Property, nor shall he cause or permit anyone else to do so. Defendant Irving Cohen shall not record any instruments, publish any notice, or take any other action that may directly or indirectly tend to adversely affect the value of the Springfield Property or that may tend to deter or discourage potential bidders from participating in the public sale, nor shall he cause or permit anyone else to do so. Violation of this paragraph shall be deemed a contempt of court and punishable as such.

8. All persons occupying the Springfield Property, including Defendant Irving Cohen, shall, subject to Paragraph 9 below, leave and vacate permanently within 90 days of the date of this order each taking with them his or her personal property (but leaving all improvements, buildings, fixtures, and appurtenances) when leaving and vacating. If any person fails or refuses to leave and vacate the property by the time specified in this Order, the United States Marshal's Office or the Sheriff of Sangamon County is authorized to take whatever action they deem appropriate to remove such person or persons from the premises, whether or not the sale of such property is being conducted by a PALS representative. If any person fails or refuses

to remove his or her personal property from the Springfield Property by the time specified herein, the personal property remaining upon the Springfield Property thereafter is deemed forfeited and abandoned, and the United States Marshal's Office or the PALS representative is authorized and directed to remove and dispose of it in any manner they see fit, including sale, in which case the proceeds of sale are to be applied first to the expenses of sale, and then to the tax lien at issue herein.

9. The United States shall deliver or mail a copy of this order of sale to any individuals or entities it is able to reasonably determine are legitimate, rent-paying tenants occupying any portion of the Springfield Property. Within seven days of the date of this Order of Sale, Defendant Irving Cohen shall also provide a copy of this Order of Sale to all tenants occupying any portion of the Springfield Property and advise them as to the pending sale of the Springfield Property. To the extent any legitimate, rent-paying tenants occupy the Springfield Property prior to its sale, those tenants shall be permitted to continue to occupy the property pursuant to the terms of the most recently negotiated lease agreement as long as those tenants continue to pay the monthly rental rate as required by their lease agreement. Legitimate, rent-paying tenants will be required to vacate permanently the Springfield Property in accordance with Paragraph 8 unless they continue to pay the monthly rental rate as required by their lease agreement. All monthly rental payments shall be mailed to: IRS PALS Officer Crystal L. Ferguson, Internal Revenue Service, 3613 Park Drive, Olympia Fields, Illinois 60461. All monthly rental payments shall be made by check and payable to the United States District Court for the Central District of Illinois and shall include the notation "United States v. Cohen, 08-cv-3282-RM" in the memo line of the check. Thereafter, an IRS PALS representative shall deposit

all such rents collected into the Registry of this Court. Should Defendant Irving Cohen, or any of his agents, nominees, or *alter egos*, receive any rents from tenants of the Springfield Property he shall promptly deposit them into the Registry of this Court. Any and all tenants shall be required to cooperate with the United States Marshal's Office or the PALS representative in connection with the sale of the Springfield Property, including but not limited to, making their commercial space reasonably available for inspection. Should any tenant fail to timely tender rent or reasonably cooperate with the United States Marshal's Office or the PALS representative, they shall be subject to ejectment as contemplated by Paragraph 8 of the Order of Sale.

10. The Marshal, his or her representative, or a PALS representative, shall deposit the amount paid by the purchaser into the registry of the court. Upon appropriate motion for disbursement or stipulation of the parties, the court will disburse the funds and any rents collected in the following partial order of preference until these expenses and liens are satisfied: first, to the IRS and/or the United States Marshal, for the costs of the sale, including an amount sufficient to cover the expenses of any steps taken to secure or maintain the realty pending sale and confirmation by the Court; and, if the United States is the successful bidder, and therefore has not tendered cash, the United States shall tender to the IRS the expenses of the sale; second, to defendant 3-B Stores in the verified amount of the outstanding balance of its mortgage against the property; and third, the remainder to the United States Department of Justice to be applied to Irving Cohen's outstanding federal tax liability.

IT IS SO ORDERED.

Dated this 15th day of April, 2013.

s/ Richard Mills
United States District Judge